STATE OF MICHIGAN

COURT OF APPEALS

COLLETTE ABOU-SOUAN,

Plaintiff-Appellant,

v

SOMERSET COLLECTION LIMITED PARTNERSHIP, d/b/a SOMERSET COLLECTION,

Defendant-Appellee.

UNPUBLISHED
July 26, 2005

No. 260074
Oakland Circuit Court
LC No. 2004-057479-NO

Before: Cooper, P.J., and Fort Hood and R. S. Gribbs*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this premises liability action. We affirm.

Plaintiff slipped and fell in melted ice cream on the floor of a common area in defendant's mall. The trial court found that the condition was open and obvious and there were no special aspects that created an unreasonable risk of harm. The trial court also found that defendant was entitled to judgment on the ground that it did not have notice of the condition.

We review the trial court's ruling on a motion for summary disposition de novo on appeal. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

Assuming without deciding that the evidence created an issue of fact whether the condition was open and obvious, we affirm the trial court's ruling on the issue of notice. Plaintiff failed to include this issue in her statement of questions presented. Therefore, the issue has not been preserved for appeal. *Liggett Restaurant Group, Inc v Pontiac*, 260 Mich App 127, 139; 676 NW2d 633 (2003) In any event, plaintiff's claim of error is without merit.

The duty owed to an invitee extends to conditions known to the landowner and those which he should have discovered by the exercise of reasonable care. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). The landowner is liable to invitees for injuries incurred on his premises where the injury results from an unsafe condition caused by the active negligence of the landowner or his employees. If the unsafe condition results from other causes,

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* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment.

the landowner is liable if the condition is known to him "or is of such a character or has existed a sufficient length of time that he should have knowledge of it." *Berryman v Kmart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992), quoting *Serinto v Borman Food Stores*, 380 Mich 637, 640-641; 158 NW2d 485 (1968).

There is no evidence that defendant was responsible for the condition or otherwise had actual knowledge thereof. Plaintiff did not know how long the ice cream had been on the floor. She argues that constructive knowledge should be inferred from the facts that ice cream "takes time to melt," and that the ice cream in question "was totally melted." However, there is no evidence to show that the ice cream had completely melted. To the contrary, plaintiff testified that she could not recall if the ice cream had completely liquefied or was still partially solid. Moreover, the record does not indicate how much ice cream had been dropped on the floor initially, and if it had remained undisturbed since being dropped or had been stepped in by others and spread over a wider area. Thus, no inference can be drawn about the time frame from the size of the puddle alone. We conclude that regardless whether the condition was open and obvious, the trial court properly ruled that defendant was entitled to judgment on the issue of notice.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs